Motorists Have Limited Charter Rights

A constitutional challenge in the Ontario Court of Justice by a motorist charged with "following too closely" contrary to s. 158 of Ontario's Highway Traffic Act was unsuccessful [1]. The challenge arose when the defendant, Robert Baillie, rear-ended a vehicle in rush hour traffic and was compelled by the Act to give a statement at the scene of the accident. After reading the statement, the police officer charged Baillie. The issue was whether s. 199(1) of the Act, which compels motorists to report accidents to the police, violated the motorist's Charter rights under s. 7 (right against self-incrimination), and s. 10(b) (right to counsel).

In determining that there was a violation of s. 7, the Court examined the tension between statutorily compelled statements and the principle against self-incrimination. The principle against self-incrimination requires that statements by an accused are made freely and voluntarily before being admitted into evidence [2]. The principle ensures fair treatment of individuals in the justice system by preventing unreliable confessions and abuses of power by officials [3]. In this case, Baillie argued that his written statement was not voluntary because he had felt obligated to make the statement [4].

1. R. v. Oickle, the Supreme Court of Canada expanded the concept of a voluntary confession beyond threats and promises to "encompass statements that had been obtained through an oppressive atmosphere, the lack of an operating mind, or police trickery" [5]. However, City of Toronto v. Baillie limited the concept when dealing with a regulatory offence. In this case, "the search for truth outweigh[ed] protecting the individual against undue compulsion by the state" for several reasons: regulatory regimes are designed for the public interest, the public has an interest in road safety, motorists voluntarily participate in the regulated activity of driving, and motorists implicitly consent to obey the rules of driving, including reporting an accident [6].

In deciding when a motorist's refusal to answer police questioning is protected by s. 7 of the Charter, the Court held that the Charter is engaged when there is an adversarial relationship between the accused and the state. For example, there is an adversarial relationship when the police obtain evidence to build a case against an accused. In the context of the Highway Traffic Act, the Court held that statements given at the "accident investigation" stage are admissible, whereas statements gathered at the "offence inquiry" stage are inadmissible. Only at the latter stage is an individual's right to remain silent engaged and there is an obligation on the police to charter and caution the individual of his

right to counsel. The distinction between the two stages is when "the investigating officer [has] reasonable and probable grounds to believe, on an objective basis, that an offence [has] occurred" [7]. In this case, the motorist's right against self-incrimination was not violated because the police officer had no objective reason to believe Baillie committed an offence; the investigation had not crossed into the offence inquiry stage. The Court's decision was bolstered by the purpose of the provision that compels motorists to report accidents to police, namely the important twin goals of road safety and protection of the public from dangerous motorists.

The Court held that the s. 10(b) of the Charter, which guarantees certain rights upon arrest or detention, was not violated since at no time was the motorist arrested, detained, or suspected of committing an offence.

Cases

- R. v. Fitzpatrick, 1995 CanLII 44 (S.C.C.).
- R. v. Jarvis, 2002 SCC 73 (CanLII).
- R. v. Oickle, 2000 SCC 38.
- R. v. Visuvalingam, [2002] O.J. No. 3515 (QL) (O.C.J.).
- R. v. White, 1999 CanLII 689 (S.C.C.).

Further Reading

- "Report of the Working Group on the Prevention of Miscarriages of Justice" Justice Canada (20 October 2005).

[1] City of Toronto v. Baillie, 2007 ONCJ 244
[2] City of Toronto, supra, note 1 at 48.
[3] City of Toronto, supra, note 1 at 76.
[4] City of Toronto, supra, note 1 at 41.
[5] Quoted in City of Toronto, supra, note 1 at 61.
[6] City of Toronto, supra, note 1 at 67.
[7] City of Toronto, supra, note 1 at 88.